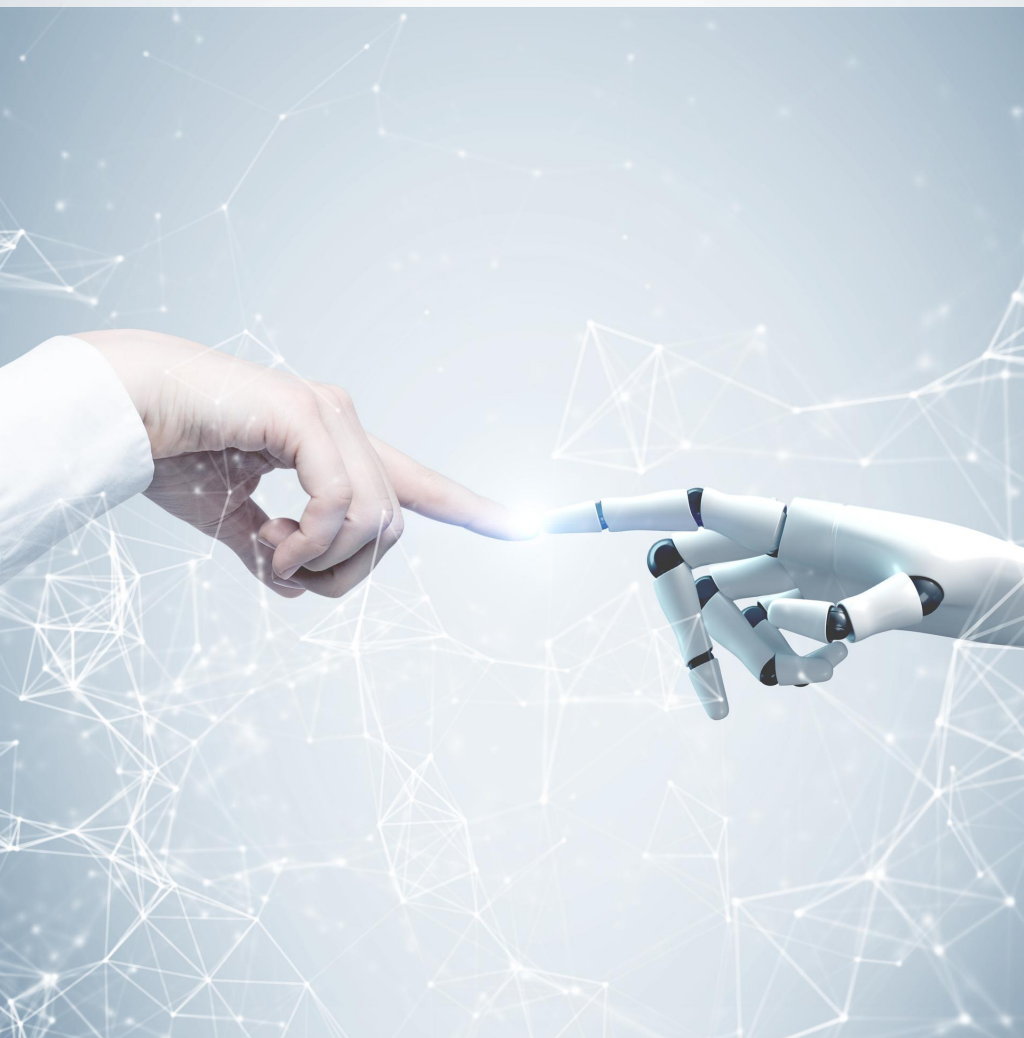


# LRD COLLOQUIUM 2020 RESEARCH PAPER SERIES



LEGAL RESEARCH AND DEVELOPMENT DEPARTMENT

THE LAW SOCIETY OF SINGAPORE

# About the Colloquium

The Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges' was held as a live webinar on 19 May 2020, amidst Singapore's circuit-breaker period, and attended by over 320 members of The Law Society of Singapore. It aimed to be a platform for legal practitioners, emerging scholars, industry experts and students to contribute to developing thought leadership in topics relating to the ethical and regulatory challenges arising from technology's impact on the legal profession.

The Colloquium sought to examine two important questions. First, how should we re-examine the role of lawyers in an age of disruption, especially with increasing automation, competition and liberalisation? Second, given that professional regulation sets the parameters of lawyers' business models, practice structures and professional values, how should lawyers, law practices and potential new entrants to the legal market be regulated or re-regulated in the future of legal work?

These issues were discussed over the course of four panel sessions focusing on the following themes:

- Panel 1: **The Role of Lawyers in the Age of Disruption**
- Panel 2: **Legal Ethics & Technology**
- Panel 3: **Alternative Legal Service Providers - To Regulate or Not to Regulate?**
- Panel 4: **Law Practices and the Future of Work**

To explore these questions, 13 research papers were presented across the four panel sessions, helmed by expert moderators and commentators.

For a snapshot of the highlights of the Colloquium, please visit the [LRD Research Portal](#) for our post-event feature article [here](#).

# Disclaimer

Whilst every effort has been made to ensure that the information contained in this research paper presented at the Colloquium and published herein are accurate, The Law Society of Singapore does not accept responsibility for any errors or omissions in this research paper. Weblinks cited in this research paper are functioning as of the date of publication.

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Panel 4  
Law Practices and the  
Future of Work

Resistance is Futile? -  
The Inexorable March Towards  
Liberalisation and Flexibility in  
the Future of Legal Work

Alvin Chen

## RESISTANCE IS FUTILE? - THE INEXORABLE MARCH TOWARDS LIBERALISATION AND FLEXIBILITY IN THE FUTURE OF LEGAL WORK

Alvin Chen\*

*The megatrends of technology, artificial intelligence and globalisation (together with an unexpected ongoing pandemic) threaten to overwhelm the global legal profession, as lawyers seek to rejuvenate and reinvigorate the future of legal work. The long-standing resistance to non-lawyer collaborations is beginning to fall in the United States, while the United Kingdom has taken flexible legal practice to another level by permitting freelance solicitors. What lessons do these regulatory experiences hold for Singapore, which has cautiously opened up the legal landscape by allowing limited non-lawyer ownership in law practices in 2015? This paper argues that Singapore should take a long-term strategy to regulating the future of legal work that is responsive to the needs of legal practitioners and promotes the value of legal services to the public.*

### I. INTRODUCTION

In *The Future of (Almost) Everything*,<sup>1</sup> the author Patrick Dixon predicts that by around 2050, legal services will move to ‘mass-market budget retail’ with a ‘growing trend to “retail legal” teams’ that will operate out of ‘call centres, shopping malls ... , or completely online using simple questionnaires to generate a huge number of highly complex, completely customised legal documents in seconds at very low cost’.<sup>2</sup>

Outlandish or realistic? But wait, there’s more. The author also predicts that ‘[m]any kinds of standard legal practice will be automated’ and ‘[o]ne-off legal advice will increasingly be offered online, either using chat screens or email, or video calls’.<sup>3</sup>

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<sup>1</sup> Patrick Dixon, *The Future of (Almost) Everything: How Our World Will Change Over the Next 100 Years* (2nd edn, Profile Books 2019).

<sup>2</sup> *ibid* 228.

<sup>3</sup> Dixon (n 1) 228-29.

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Perhaps this future prediction is not so far off? We are currently living in a reality, hard to imagine half a year ago, where remote working, remote learning and remote justice, have been thrust upon us at breakneck pace. Through an unfortunate series of events, we have been given an accelerated glimpse of the future of work today. This 'reverse' time capsule has given us starkly concrete information on how the future of work is likely to affect law practices in the future.

This paper comprises two parts. First, it provides a brief survey of the megatrends, including the impact of the ongoing pandemic, on the future of work. Second, it assesses two significant trends in the global legal profession and their potential impact on law practices in Singapore, namely, the current movement towards establishing multi-disciplinary partnerships ('MDPs') in the United States ('US') and the recent introduction of freelance solicitors in the United Kingdom ('UK').

## II. THE FUTURE OF WORK - MEGATRENDS

In global discussions on the future of work, it is widely acknowledged that technological advances such as 'ubiquitous high-speed mobile internet; artificial intelligence; widespread adoption of big data analytics; and cloud technology' are expected to drive business growth in the 2018-2022 period and significantly transform global labour markets.<sup>4</sup> In particular, artificial intelligence has dominated debates on the future of work because of its vast but uncertain implications.

The challenges unleashed by technological breakthroughs are certainly critical, although they tend to be overstated, especially by the media. We are constantly bombarded with doomsday scenarios – robots, artificial intelligence and machines (which may indeed be indistinguishable in future) will take over our jobs, surpass our human capabilities and ultimately render us obsolescent. The ongoing pandemic delivers another doomsday scenario – we may not even be around to work in the future.

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<sup>4</sup> World Economic Forum, *The Future of Jobs Report 2018* (World Economic Forum 2018).

An OECD Employment Outlook 2019 report, however, suggests that the non-pandemic doomsday scenarios are 'unlikely to materialise', although there are 'some real risks' caused by 'the megatrends of technological change and globalisation'.<sup>5</sup> We are unlikely to be susceptible to 'massive technological unemployment', but will need to upskill and reskill to deal with 'deep structural changes' that will occur in the market.<sup>6</sup> The future of work, the OECD asserts, will 'largely depend on the policy decisions countries make' and there is hope that 'with the right policies and institutions in place, the opportunities that digitisation, globalisation and longer lives will bring can be seized, and the risks mitigated'.<sup>7</sup>

A rather more pessimistic view is taken by Daniel Susskind, the author of the recent book *A World Without Work: Technology, Automation and How We Should Respond*.<sup>8</sup> He posits 'a world with less paid work',<sup>9</sup> as machines incrementally take over manual, cognitive and affective tasks performed by humans (a trend he calls 'task encroachment')<sup>10</sup> and displace human workers in the labour market. While he acknowledges that skills education may help to alleviate the coming storm, he argues that that because of the varying capabilities of human beings, not everyone will be able to attain the necessary skills required for jobs in the new world of work.<sup>11</sup> Moreover, technological progress may reduce, or indeed remove, the demand for human workers, such that even the best skills education would serve little purpose.<sup>12</sup>

From a pragmatic viewpoint, though, skills education represents the best solution for now, given that no one can predict the trajectory of technological advances and doing something is probably better than doing nothing at all. To this end, Singapore has repeatedly emphasised the need for its workers to acquire deep skills and practise lifelong learning in the future economy. In its report published in February

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<sup>5</sup> Organisation for Economic Co-operation and Development, *The Future of Work: OECD Employment Outlook 2019* (Organisation for Economic Co-operation and Development 2019) 12-13.

<sup>6</sup> *ibid* 13.

<sup>7</sup> *ibid* 12.

<sup>8</sup> Daniel Susskind, *A World Without Work: Technology, Automation and How We Should Respond* (Metropolitan Books 2020).

<sup>9</sup> *ibid* 231.

<sup>10</sup> *ibid* ch 5.

<sup>11</sup> *ibid* 164-66.

<sup>12</sup> *ibid* 166-67.

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2017, the Committee on the Future Economy ('CFE') recommended, among other things, that training providers and Institutes of Higher Learning offer more 'modularised and technology-enabled training programmes', and that companies provide more in-house training for its employees.<sup>13</sup>

In another report published in April 2017, the Working Group on Legal and Accounting Services (formed under the CFE's auspices) also recognised that the core skillsets of Singapore's lawyers (and accountants) were no longer adequate in 'the increasingly interconnected and complex business environment'.<sup>14</sup> Singapore lawyers will need to become trusted business advisers who can 'bring value and help clients shape business strategies'.<sup>15</sup> They will have to value-add by acquiring 'deep regional knowledge and networks; regional legal expertise; and knowledge of their clients' industries and needs'.<sup>16</sup> Similar to the CFE, the Working Group proposed to develop professionals' multi-disciplinary skillsets and business orientation by, for example, infusing technology education into law schools and legal practice.<sup>17</sup>

An important aspect of the Working Group's report was in identifying nine high growth practice areas for the legal and accounting sectors, five of which offered opportunities for lawyers and accountants to collaborate. These practice areas were: finance, projects & infrastructure, corporations, restructuring and risk management & corporate governance.<sup>18</sup> One of the Working Group's recommendations was for law and accounting associations to work with other stakeholders to 'coordinate strategies to capture growth opportunities, and strengthen and promote the identified high growth areas'.<sup>19</sup>

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<sup>13</sup> Committee on the Future Economy, 'Report of the Committee on the Future Economy: Pioneers of the Next Generation' (*Committee on the Future Economy*, February 2017) para 28, 89(a) <[www.mti.gov.sg/Resources/publications/Report-of-the-Committee-on-the-Future-Economy](http://www.mti.gov.sg/Resources/publications/Report-of-the-Committee-on-the-Future-Economy)> accessed 5 May 2020.

<sup>14</sup> The Working Group on Legal and Accounting Services, 'Report of the Working Group on Legal and Accounting Services' (*Ministry of Finance Singapore*, April 2017) para 3.5.1 <[www.mof.gov.sg/Portals/0/newsroom/press%20releases/2017/CFE-Report%20of%20the%20Working%20Group%20on%20Legal%20and%20Accounting%20Services-Apr2017.pdf](http://www.mof.gov.sg/Portals/0/newsroom/press%20releases/2017/CFE-Report%20of%20the%20Working%20Group%20on%20Legal%20and%20Accounting%20Services-Apr2017.pdf)> accessed 5 May 2020.

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid* para 3.5.2.

<sup>17</sup> *ibid* para 3.5.4.

<sup>18</sup> *ibid* para 2.2.1.

<sup>19</sup> *ibid* para 3.2.2.



In sum, the megatrends highlighted above, together with the policy decisions that Singapore has taken vis-à-vis the legal and accounting sectors specifically, point to an inconvenient truth – in the future of work, lawyers are unlikely to survive or thrive if they do not leverage on technology and non-lawyer expertise or build cross-disciplinary skillsets. Indeed, Singapore had already, in 2015, taken the first step in recognising the utility of non-lawyer expertise by permitting law practices to form legal disciplinary partnerships ('LDPs'), where non-lawyer managers/employees can own equity and/or share profits of the LDP (up to 25 percent).<sup>20</sup> This partial liberalisation was intended to 'give law practices the flexibility to attract and retain [non-lawyer] talent with strong management or finance experience to better manage the business or financial aspects of the law practice'.<sup>21</sup>

Five years on though, LDPs are still restricted to providing legal services only without any increase in non-lawyer ownership and formal MDP structures have still not been permitted in Singapore. Is this the time to introduce MDPs to accelerate collaboration between lawyers and non-lawyers in Singapore? To address this question, we examine recent developments in the US where regulation had traditionally impeded collaboration between lawyers and non-lawyers.

### **III. THE SURPRISING TURN TOWARDS MDPs IN THE US**

For many years, the US had strongly resisted pressures to allow law firms to form MDPs with non-lawyers. This 'insulating' stance has been criticised as preserving lawyers' monopoly in delivering legal services, but has also been justified on public interest grounds based on the need to maintain professionalism and lawyer independence.<sup>22</sup>

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<sup>20</sup> Ministry of Law Singapore, 'Circular on the Establishment of the Legal Services Regulatory Authority' (*Ministry of Law Singapore*, 4 July 2018) para 17. <[www.mlaw.gov.sg/news/announcements/circular-on-the-establishment-of-the-legal-service-regu](http://www.mlaw.gov.sg/news/announcements/circular-on-the-establishment-of-the-legal-service-regu)> accessed 5 May 2020.

<sup>21</sup> *ibid* para 18.

<sup>22</sup> Noel Semple, *Legal Services Regulation at the Crossroads: Justitia's Legions* (Edward Elgar Publishing 2015) 183-242.

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The turning point in the US legal landscape appears to be based largely on access to justice concerns. In Resolution 115 passed by the American Bar Association ('ABA') in February 2020, the ABA encouraged US states to 'consider innovative approaches to the access to justice crisis in order to help the more than 80 percent of people below the poverty line and the many middle-income Americans who lack meaningful access to effective civil legal services'.<sup>23</sup> A report accompanying Resolution 115 noted that in the World Justice Project Rule of Law Index 2019 report, the United States was ranked '99<sup>th</sup> out of 126 countries in terms of the accessibility and affordability of civil legal services'.<sup>24</sup>

Nevertheless, because of strong opposition from some US states, Resolution 115 did not expressly endorse non-lawyer ownership.<sup>25</sup> Other US states, such as Arizona, Utah and Washington, have, however, been bolder in taking concrete steps to make MDPs a reality. For example, the Arizona Task Force on the Delivery of Legal Services filed a petition with the Arizona Supreme Court earlier this year, requesting the court to adopt a framework to regulate Alternative Business Structures ('ABSs'), another term for MDPs that is used in the UK.<sup>26</sup> The Arizona Task Force also proposed to abolish its Ethical Rule 5.4, which prohibited non-lawyers from owning any interest in a law firm.<sup>27</sup> This proposal would allow a professional non-lawyer administrator in a law firm to have an ownership interest or a law firm to 'attract non-lawyer talent, such as technologists, marketers, and business systems analysts, by providing equity in the firm'.<sup>28</sup>

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<sup>23</sup> American Bar Association, 'Resolution 115 – Encouraging Regulatory Innovation' (*Centre for Innovation and others*, 17 February 2020). <[www.americanbar.org/groups/centers\\_commissions/center-for-innovation/Resolution115/](http://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/)> accessed 5 May 2020.

<sup>24</sup> American Bar Association, 'Revised Resolution and Revised Report' (*Centre for Innovation and others*, February 2020) 2 <[www.americanbar.org/content/dam/aba/images/centerforinnovation/r115resandreport.pdf](http://www.americanbar.org/content/dam/aba/images/centerforinnovation/r115resandreport.pdf)> accessed 5 May 2020.

<sup>25</sup> Matt Reynolds, 'To Increase Access to Justice, Regulatory Innovation Should Be Considered, ABA House Says' (*ABA Journal*, 17 February 2020) <[www.abajournal.com/news/article/resolution-115](http://www.abajournal.com/news/article/resolution-115)> accessed 5 May 2020.

<sup>26</sup> Dave Byers, 'Petition to Amend Rules 31, 32, 41, 42 (ERs 1.0-5.7), 46-51, 54-58, 60, 75 and 76, Ariz R Sup Ct, and Adopt New Rule 33.1, Ariz R Sup Ct' (31 January 2020) 2 <[www.azcourts.gov/Portals/74/LSTF/Report/RulePetitionandAppendicesRed.pdf?ver=2020-01-30-142830-090](http://www.azcourts.gov/Portals/74/LSTF/Report/RulePetitionandAppendicesRed.pdf?ver=2020-01-30-142830-090)> accessed 5 May 2020.

<sup>27</sup> *ibid.*

<sup>28</sup> *ibid* 2-3.

A secondary reason for the turn to MDPs in the US is suggested in the August 2019 report by the Utah Work Group on Regulatory Reform.<sup>29</sup> The Utah Work Group cited the UK experience with ABSs (introduced in England and Wales since 2011), noting that change in the UK market was ‘unsurprisingly more incremental than revolutionary’ and there was ‘little or no evidence of ABS-specific consumer harm’.<sup>30</sup> The lack of any adverse impact of ABSs in the UK might have encouraged Utah to press ahead with the plan to permit MDPs. It was recently reported that the Utah Supreme Court had proposed to allow non-lawyers to own or invest in legal services providers, so as to inject non-lawyer capital and expertise in developing innovative ways to increase access to justice.<sup>31</sup>

As opposed to Singapore which preferred to adopt a conservative and calibrated approach by introducing LDPs first, at least a few US states, if their efforts to implement MDPs are successful, will be taking a ‘big bang’ approach (from total resistance to full liberalisation). It is unclear whether Singapore should follow suit soon. There may be strong economic reasons to do so. For example, the Committee to Review the Regulatory Framework of the Singapore Legal Services Sector had observed in 2014 that Singapore might be adversely affected if it excluded foreign MDPs, while its key competitor jurisdictions took a more liberal approach.<sup>32</sup>

On the other hand, Singapore does not have the same acute concerns with access to justice as the US, being consistently ranked well above the US on the accessibility and affordability of civil legal services.<sup>33</sup> Accelerating the introduction

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<sup>29</sup> The Utah Work Group on Regulatory Reform, ‘Narrowing the Access-to-Justice Gap by Reimagining Regulation’ (*The Utah Work Group on Regulatory Reform*, August 2019) <[www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf](http://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf)> accessed 5 May 2020.

<sup>30</sup> *ibid* 50-51.

<sup>31</sup> Lyle Moran, ‘Utah’s High Court Proposes Nonlawyer Ownership of Law Firms and Wide-Ranging Reforms’ (*ABA Journal*, 27 April 2020) <[www.abajournal.com/news/article/utahs-high-court-proposes-wide-ranging-legal-industry-reforms](http://www.abajournal.com/news/article/utahs-high-court-proposes-wide-ranging-legal-industry-reforms)> accessed 5 May 2020.

<sup>32</sup> The Committee to Review the Regulatory Framework of the Singapore Legal Services Sector, ‘Final Report’ (*Ministry of Law Singapore*, January 2014) para 89 <[www.mlaw.gov.sg/files/Final-Report-of-the-Committee-to-Review-the-Reg-Framework-of-the-Spore-Legal-Sector.pdf](http://www.mlaw.gov.sg/files/Final-Report-of-the-Committee-to-Review-the-Reg-Framework-of-the-Spore-Legal-Sector.pdf)> accessed 5 May 2020.

<sup>33</sup> Between 2012 and 2020, Singapore’s scores under Factor 7.1. ‘People Can Access and Afford Civil Justice’ were: 0.61 (2012-13), 0.56 (2014), 0.66 (2015), 0.63 (2016), 0.61 (2017-18), 0.65 (2019) and 0.63 (2020). In contrast, the United States’ scores for Factor 7.1 were: 0.53 (2012-13), 0.46 (2014), 0.47 (2015), 0.41 (2016), 0.42 (2017-18), 0.46 (2019) and 0.45 (2020). See World Justice Project, ‘Rule of Law Index: Current and Historical Data’ (*World Justice Project*)

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of both local and foreign MDPs in Singapore may also not have the effect of immediately infusing non-lawyer capital, expertise and leadership into Singapore law practices. The Utah Work Group noted that as of February 2019,<sup>34</sup> out of the over 800 entities licensed as ABSs in England and Wales, '[l]awyer-ownership remains the dominant form with three-fifths of ABSs having less than 50 percent non-lawyer ownership'.<sup>35</sup> If MDPs were to be introduced in Singapore, we should likewise not expect the local legal landscape to change swiftly and drastically.

In addition, an English commentator has observed that although the introduction of ABSs in the UK has led to more innovative legal services, it 'has not yet reduced the cost of legal services significantly', possibly because 'regulatory overheads are a significant constraint on price reduction'.<sup>36</sup> Herein lies a conundrum: introducing regulations to permit MDPs may not achieve the intended effect of making legal services more affordable. Moreover, the legal landscape will not remain static even if MDPs are introduced, as MDPs will have to contend and compete with traditional law practices as well as alternative legal service providers.

Be that as it may, the above concerns do not strongly militate against introducing MDPs in Singapore, but it would be unrealistic to expect that MDPs will be the 'silver bullet' for all lawyers to survive and thrive in the new world of work. There is, however, another possible route in the future of work that has surfaced together with the rise of the 'gig economy' – freelance solicitors.

#### IV. FLEXIBILITY AND FREELANCE SOLICITORS

In November 2019, the UK Solicitors Regulation Authority ('SRA') amended its regulations to allow freelance or self-employed solicitors to be engaged directly by

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<<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data>> accessed 5 May 2020 (scores are available in the downloadable spreadsheet).

<sup>34</sup> According to the Solicitors Regulation Authority's website, there were 10,384 registered solicitors' firms in February 2019. Solicitors Regulation Authority, 'Breakdown of Solicitor Firms' (*Solicitors Regulation Authority*) <[www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics/data/solicitor\\_firms/](http://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics/data/solicitor_firms/)> accessed 5 May 2020.

<sup>35</sup> Utah Work Group (n 29) 50.

<sup>36</sup> Andrew Boon (ed), *International Perspectives on the Regulation of Lawyers and Legal Services* (Hart Publishing 2017) 246.

clients, *without the need to practice in an authorised law firm*.<sup>37</sup> Freelance solicitors, however, must not employ anyone in connection with the services they provide and must only practise in their own name (as opposed to under a trading name or through a service company).<sup>38</sup>

Stricter requirements were imposed on freelance solicitors providing reserved legal services, so as to protect the public as well as inexperienced solicitors from turning freelance too quickly.<sup>39</sup> For example, freelance solicitors must have at least three years of practice experience and cannot hold client money (except for money pertaining to payments of unbilled costs and disbursements in limited circumstances).<sup>40</sup> They must also take out and maintain 'adequate and appropriate' indemnity insurance cover; in contrast, freelance solicitors providing non-reserved legal services are not required to take out the same extent of indemnity insurance cover.<sup>41</sup>

The SRA's introduction of freelance solicitors was a regulatory innovation, as it gave solicitors, for the first time, the opportunity to deliver legal services outside of a law firm environment. This was a controversial issue – some respondents to the SRA consultations had taken the view that allowing freelance solicitors would create a two-tier profession which could undermine the standing of the profession in the long run.<sup>42</sup> Doubts were also raised as to whether members of the public, especially vulnerable clients, would be able to distinguish between sole practitioners and freelance solicitors.<sup>43</sup>

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<sup>37</sup> Solicitors Regulation Authority, 'Guidance: Preparing to Become a Sole Practitioner or an SRA-Regulated Freelance Solicitor' (*Solicitors Regulation Authority*, 25 November 2019) <[www.sra.org.uk/solicitors/guidance/ethics-guidance/preparing-to-become-a-sole-practitioner-or-an-sra-regulated-independent-solicitor/](http://www.sra.org.uk/solicitors/guidance/ethics-guidance/preparing-to-become-a-sole-practitioner-or-an-sra-regulated-independent-solicitor/)> accessed 5 May 2020.

<sup>38</sup> *ibid.*

<sup>39</sup> Solicitors Regulation Authority, 'Looking to the Future: Phase Two of our Handbook Reforms – Our Post-Consultation Position' (*Solicitors Regulation Authority*, 14 June 2018) para 86 <[www.sra.org.uk/sra/consultations/consultation-listing/ltrf-phase-two-handbook-reform/](http://www.sra.org.uk/sra/consultations/consultation-listing/ltrf-phase-two-handbook-reform/)> accessed 5 May 2020.

<sup>40</sup> Solicitors Regulation Authority (n 37).

<sup>41</sup> *ibid.*

<sup>42</sup> Solicitors Regulation Authority, 'Looking to the Future: Flexibility and Public Protection – All Responses' (*Solicitors Regulation Authority*, 12 June 2017) <[www.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/?s=c](http://www.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/?s=c)> accessed 5 May 2020; Solicitors Regulation Authority, 'Looking to the Future: Phase Two of our Handbook Reforms – Consultation Responses' (*Solicitors Regulation Authority*, 14 June 2018) <[www.sra.org.uk/sra/consultations/consultation-listing/ltrf-phase-two-handbook-reform/](http://www.sra.org.uk/sra/consultations/consultation-listing/ltrf-phase-two-handbook-reform/)> accessed 5 May 2020.

<sup>43</sup> *ibid.*

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Although the SRA recognised that potential consumer confusion might ensue on the regulatory status of freelance solicitors, it took the view that these issues could be addressed through regulating the individual solicitor.<sup>44</sup> Even though only a minority of respondents to its 2017 consultation supported the proposal, the SRA ultimately decided in favour of giving solicitors the flexibility to practise and innovate.<sup>45</sup> The SRA observed that it would be ‘artificial and disproportionate to force [freelance] solicitors who are genuinely working on their own into the same regulatory model as a firm that may employ hundreds of people’.<sup>46</sup>

Access to justice was another important consideration in the SRA’s decision to allow freelance solicitors. As noted in its 2016 consultation paper, SRA’s research showed that ‘many people and small businesses still [could not] access the legal advice that they need[ed], at an affordable price’.<sup>47</sup> One feedback respondent to the SRA’s 2017 consultation noted that freelance solicitors would allow small businesses in particular to ‘access legal services without the extra layer of costs imposed by a firm’.<sup>48</sup>

While it is early days, the initial take-up rate for freelance solicitors in the UK has been slow, partly due to difficulties in securing indemnity insurance cover.<sup>49</sup> As of 12 March 2020, the SRA had registered 71 freelance solicitors.<sup>50</sup> Another major disincentive is that freelance solicitors are not allowed to employ anyone else, even a secretary,<sup>51</sup> although they are permitted to enter into chambers-style arrangements.<sup>52</sup>

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<sup>44</sup> Solicitors Regulation Authority (n 39) para 92.

<sup>45</sup> *ibid* para 80, 84.

<sup>46</sup> *ibid* para 84.

<sup>47</sup> Solicitors Regulation Authority, ‘Consultation: Looking to the Future: Flexibility and Public Protection’ (*Solicitors Regulation Authority*, 12 June 2017) para 9 <[www.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/?s=c](http://www.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/?s=c)> accessed 5 May 2020.

<sup>48</sup> Solicitors Regulation Authority (n 39) para 81.

<sup>49</sup> John Hyde, ‘Broker Steps in to Offer Freelance Solicitors a PII Solution’ (*The Law Society Gazette*, 13 February 2020) <[www.lawgazette.co.uk/news/broker-steps-in-to-offer-freelance-solicitors-a-pii-solution/5103086.article](http://www.lawgazette.co.uk/news/broker-steps-in-to-offer-freelance-solicitors-a-pii-solution/5103086.article)> accessed 5 May 2020.

<sup>50</sup> Nick Hilborne, ‘71 Bang on the Drum for Freelance Solicitor Status’ (*Legal Futures*, 12 March 2020) <[www.legalfutures.co.uk/latest-news/71-bang-on-the-drum-for-freelance-solicitor-status](http://www.legalfutures.co.uk/latest-news/71-bang-on-the-drum-for-freelance-solicitor-status)> accessed 5 May 2020.

<sup>51</sup> *ibid*.

<sup>52</sup> Solicitors Regulation Authority (n 37).

It has been suggested that allowing freelance solicitors is part of the trend towards 'uberisation' of legal services, a reference to the use of digital platforms by independent contractors (such as Uber and Airbnb) to provide services to consumers directly.<sup>53</sup> The term 'uberisation', however, has acquired pejorative connotations due to the lack of security or stability of 'gig work'.<sup>54</sup> In the context of SRA's freelance solicitors, it is also unclear whether they all utilise technological platforms to deliver legal services to their clients, which is the essence of the 'Uber' model. Hence, the SRA model of freelance solicitors would appear to be *sui generis* at this juncture.

Nevertheless, if we adopt a broader definition of freelance solicitors, in terms of independent contractors operating within a law practice or corporate environment, there is a discernible growing trend of 'gig lawyers' around the world as illustrated by, for example, NewLaw firms in Australia<sup>55</sup> and California's growing gig lawyer economy.<sup>56</sup> Even in Singapore, chambers-style arrangements, situated within Singapore Group Practice or other practice structures,<sup>57</sup> are becoming increasingly common amidst a burgeoning gig economy in Singapore. Looking ahead, the work-from-home arrangements dictated by the current pandemic may also galvanise many lawyers to re-examine their business models and to strive for more autonomy and flexibility in legal practice.

## V. CONCLUSION

This brief comparative study has highlighted two ongoing approaches in regulating the future of work: the US movement towards incorporating non-lawyer capital, leadership and collaboration through establishing MDPs and the UK model of flexible legal practice which recognises the value of solicitors and the need for

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<sup>53</sup> Margaret Thornton, 'Towards the Uberisation of Legal Practice' (2019) 1 Law, Technology and Humans 46 <<https://doi.org/10.5204/lthj.v1i1.1277>> accessed 5 May 2020.

<sup>54</sup> See e.g. Shainaz Firiray, 'The Arrival of Uber Works Isn't Going to Help Fix the Gig Economy' (*Quartz*, 18 November 2019) <<https://qz.com/1749434/why-uber-works-might-be-bad-news-for-gig-economy-workers/>> accessed 5 May 2020.

<sup>55</sup> Thornton (n 53).

<sup>56</sup> William D. Henderson, 'Legal Market Landscape Report' (*State Bar of California*, July 2018) 6-9 <<http://board.calbar.ca.gov/Agenda.aspx?id=14807&tid=0&show=100018904&s=true#10026438>> accessed 5 May 2020.

<sup>57</sup> See e.g. Essex Court Chambers Duxton (Singapore Group Practice) which was formed in 2017.



## Resistance is Futile?

clients to have easier access to such expertise. On the surface, the different approaches appear contradictory: the US has decided to press on with MDPs notwithstanding a rising gig lawyer economy in states like California, whereas the UK has now endorsed freelance solicitors notwithstanding that ABSs had been introduced there for close to 10 years.

A deeper analysis suggests that the two approaches, which are both geared towards addressing access to justice concerns, are not irreconcilable. Rather they reflect regulatory pragmatism. In the case of the US, the long-standing hostility towards MDPs is starting to dissolve rapidly, which reflects an acceptance of the hard truth that innovative legal services cannot be developed based on lawyer expertise alone. On the other hand, the slower than anticipated trajectory of ABSs had not solved the UK's access to justice problems; hence it had to look for other regulatory solutions.

What lessons should Singapore draw from the experiences of the US and the UK? Two key points come to mind. Firstly, regulating the future of work is for the long-term. There are no quick fixes. Do not expect instant success. Before embarking on any regulatory innovations, it is best to draw up a roadmap for the next 20 years that takes into account that one or more regulatory innovations may fail to perform up to expectations in the long run. Ideally, the roadmap should also identify a range of different regulatory solutions to fall back on. Flexibility to adapt to the evolving legal landscape and shifting megatrends is essential.

Secondly, even if the Singapore legal profession moves towards greater participation of non-lawyers in the delivery of legal services, let us not forget to continue to look for ways to unlock and enhance lawyer expertise and value through regulatory innovations. Certainly, such innovations should not be implemented without due regard to consumer interest, professional values and the independence of the Bar. Hence, the goal of regulatory reform in the future of work should not be to assimilate legal practitioners into dissonant environments that completely obliterate legal professionalism and independence. Instead, it should seek to articulate a clear and transparent regulatory philosophy that, among other



things, is responsive to the needs of legal practitioners and promotes the value of legal services to the public.

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